

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BRIAN KEITH SILER,)	
)	
Plaintiff,)	
)	
v.)	1:15CV961
)	
MUNICIPALITY OF RANDOLPH)	
COUNTY, et al.,)	
)	
Defendant(s).)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an application to proceed *in forma pauperis*. The form of the Complaint is such that serious flaws make it impossible to further process the Complaint. The problems are:

1. Plaintiff states in conclusory fashion that Defendants violated his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution. However, he sets out no facts to support this statement. Plaintiff must set out facts supporting his claim.
2. It appears that Plaintiff seeks to use this action to attack his state court criminal convictions. If so, he cannot use § 1983 for this purpose, but must instead file a petition for habeas corpus under 28 U.S.C. § 2254 after exhausting his claims in the state courts. He also cannot seek damages if his claims would necessarily invalidate his state criminal convictions.

Consequently, the Complaint should be dismissed, but without prejudice to Plaintiff filing a new action, on the proper forms, which corrects the defects of the present Complaint. To further aid Plaintiff, the Clerk is instructed to send Plaintiff new § 1983 and § 2254 forms,

instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Plaintiff § 1983 and § 2254 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a new action, on the proper forms, which corrects the defects cited above.

This, the 19th day of November, 2015.

/s/ L. Patrick Auld
L. Patrick Auld
United States Magistrate Judge